

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/21/2020
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UNITED STATES OF AMERICA,	:	
	:	
-against-	:	09-CR-415 (VEC)
	:	
ANTONIO ROSARIO,	:	<u>ORDER</u>
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on April 6, 2020, Mr. Rosario moved for compassionate release pursuant to 18 U.S.C. § 3582(c) (Dkt. 281);

WHEREAS this Court has found that it may not waive the statute’s exhaustion requirement because of the exigencies presented by the COVID-19 pandemic, *see* Order at 1, 18-CR-840, Dkt. 153, *United States v. Piskacek* (Apr. 10, 2020) (citing *United States v. Roberts*, No. 18-CR-528, 2020 WL 1700032, at \*2–3 (S.D.N.Y. Apr. 8, 2020));

WHEREAS Mr. Rosario’s motion represents that he filed his “request for a compassionate release motion with the MDC’s Warden on April 2, 2020,” Def.’s Reply (Dkt. 284) at 2 n.1;

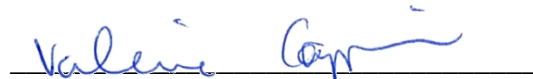
WHEREAS Mr. Rosario has an appeal pending, divesting this Court of jurisdiction to rule on his request for compassionate release, even after 30 days have elapsed from the date his request for compassionate release was filed with the Warden of MDC;

IT IS HEREBY ORDERED that the Court will defer determining whether to issue an indicative ruling pursuant to Fed. R. Crim. Proc. 37(a)(3) until 30 days have lapsed from the MDC Warden’s receipt of the motion. At that time, Mr. Rosario must notify the Court whether the Bureau of Prisons has acted on his request.

IT IS FURTHER ORDERED that, on May 4, 2020, the Government shall provide the Court with a report on the number of inmates then detained at the MDC who have tested positive for COVID-19 and the number of inmates then detained at the MDC who have been tested for COVID-19.

**SO ORDERED.**

**Date: April 21, 2020  
New York, NY**

  
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**VALERIE CAPRONI**  
**United States District Judge**